UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1997/675
4 September 1997
ENGLISH
ORIGINAL: FRENCH

LETTER DATED 29 AUGUST 1997 FROM THE PERMANENT REPRESENTATIVE OF THE REPUBLIC OF THE CONGO TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to transmit to you herewith decision 001/97, dated 19 July 1997, whereby the Constitutional Council of the Republic of the Congo, noting that it was impossible for the Government to organize the presidential elections scheduled for 27 July 1997, decided to postpone such elections and, accordingly, to extend the mandate of the current President of the Republic until the proclamation of a successor elected by universal suffrage, in accordance with the relevant provisions of the Constitution in force in the Republic of the Congo.

In view of the importance of this decision, I should be grateful if you would have it issued as a Security Council document.

(Signed) Daniel ABIBI

97-22887 (E) 050997 050997

/...

Annex

Decision 001/97 of the Constitutional Council of the Republic of the Congo

The Constitutional Council,

Having before it a petition dated 16 July 1997 from the Prime Minister, which petition was filed on that day for the postponing of the presidential elections and, accordingly, for the extension of the mandate of the President until the proclamation of a successor,

Having regard to the Constitution of 15 March 1992, with specific reference to its articles 67, 68, 69 and 90,

Having regard to Act No. 17/94 of 1 August 1994 relating to the organization and functioning of the Constitutional Council,

Having heard the pleas of the Advocate of the State,

Having heard the Rapporteur;

I. IN RESPECT OF RECEIVABILITY AS TO FORM

Whereas the Constitution remains silent regarding the status of petitioners empowered to bring such a matter before the Constitutional Council,

Whereas, however, article 69, paragraph 3, of the Constitution gives the Government of the Republic the responsibility of "initiating the process of presidential elections",

Whereas it is therefore incumbent on the Government to organize such elections,

Whereas, in general, "the Government shall determine and conduct national policy", under article 89 of the Constitution,

Whereas, accordingly, the Prime Minister, as head of Government, with responsibility for directing and coordinating government action under article 90 of the Constitution has a definite interest in acting to have the presidential elections postponed,

Whereas he is thus justified in bringing before the Constitutional Council the question of the postponement of the date of the presidential elections and, subsequently, the question of the extension of the mandate of the current President,

Whereas, moreover, the petition filed by the Prime Minister comes within the general framework of petitions covered by articles 27 and 28 of the Act

governing the Constitutional Council, articles which indicate who is empowered to refer matters to the Constitutional Council,

Whereas it is with good reason that the Prime Minister has brought the matter before the Constitutional Council;

II. IN RESPECT OF THE COMPETENCE OF THE CONSTITUTIONAL COUNCIL

Whereas the last paragraph of article 69 of the Constitution provides that "the Constitutional Council shall be competent to order an extension of the time limits for presidential elections set forth in paragraph 4 of this article";

III. IN RESPECT OF THE EXTENSION OF THE TIME LIMITS FOR PRESIDENTIAL ELECTIONS

Whereas article 69, paragraph 4, of the Constitution provides that "the election of the new President of the Republic shall take place at least 20 days before, but not more than 35 days before, the expiration of the mandate of the current President",

Whereas, pursuant to this constitutional provision, the President of the Republic, by Decree No. 97/234 of 7 June 1997, convened the Electoral Board with a view to the first round of the presidential elections scheduled for 27 July 1997, and established a pre-election Logistical Unit by Decree No. 97/232 of 7 July 1997,

Whereas the date of 27 July 1997 had been accepted by the Congolese political community as a whole, represented within the National Commission responsible for the special administrative census, and by the prospective candidates in the presidential elections, in a solemn commitment signed on 31 May 1997 under the auspices of the Director-General of UNESCO, Mr. Federico Mayor,

Whereas, however, the electoral process has been brutally interrupted by an internal armed conflict, which broke out on 5 June 1997 and is still continuing,

Whereas, under article 69 of the Constitution, the Constitutional Council, in the postponement of presidential elections in cases not covered by law and statute, is vested with powers of interpretation from which it derives broad discretionary authority,

Whereas these powers mean, inter alia, that the Constitutional Council enjoys full freedom to take into account any situation not envisaged in the Constitution that might prevent the organization of presidential elections,

Whereas the internal armed conflict, because of its scope and duration, has irreparably damaged prospects for the holding of elections on 27 July 1997, and thus constitutes a typical example of such a situation,

Whereas, accordingly, the elections should be postponed,

Whereas, however, the Constitutional Council does not have the power to order a postponement of indefinite duration, since the last paragraph of article 69 of the Constitution reads as follows:

"The Constitutional Council may extend the time limits set forth in paragraph 4 of this article ... provided that the elections do not take place more than 90 days after the date of the decision of the Council",

Whereas, however, the outbreak of the internal armed conflict has interrupted the special administrative census and other pre-election operations,

Whereas, inter alia, it will take a relatively long period to assess how much time will be needed for proper resumption of work by the Electoral Board - whose members have been dispersed by the war - so that it might undertake a full preparation of the electoral rolls,

Whereas the lack of a peace agreement constitutes a constant threat to the electoral process,

Whereas, accordingly, the setting of a date for presidential elections depends largely on consideration of the aforementioned contingencies,

Whereas it is incumbent on the Government, in agreement with the political community as a whole, to set the period for presidential elections taking into account the schedule of the Logistical Unit and the holding of legislative elections in 1998;

IV. IN RESPECT OF THE EXTENSION OF THE MANDATE OF THE CURRENT PRESIDENT

Whereas the last paragraph of article 69 of the Constitution reads as follows:

"The Constitutional Council may extend the time limits set forth in paragraph 4 of this article ... If the application of this paragraph has the effect of delaying the election until a date subsequent to the expiration of the mandate of the current President, he shall remain in office until the proclamation of a successor",

Whereas the current President was elected in August 1992, and was sworn in and took office on 31 August 1992,

Whereas, under article 68, paragraph 1, of the Constitution, to the effect that "the President of the Republic shall be elected for five (5) years by direct universal suffrage", his mandate expires on 31 August 1997,

Whereas, as a result of the aforementioned developments, the presidential elections cannot take place by 31 August 1997,

Whereas, since the postponement of the presidential elections is inevitable, the provisions that come into play are those at the end of the last

paragraph of article 69 of the Constitution, relating to the transfer of power between the current President and a successor elected by universal suffrage,

Whereas, contrary to the situation envisaged in article 70 of the Constitution concerning vacation of post or impediments, the conduct of presidential elections after the expiration of the mandate of the current President would in no way involve an interruption in presidential functions,

Whereas, therefore, the current President is to transfer power only to a President elected within the terms of article 68 of the Constitution,

Whereas the principle of continuity of the State set forth in article 67 of the Constitution will thus be upheld,

Whereas, accordingly, the President of the Republic shall remain in office until the proclamation of a successor by the Constitutional Council,

Whereas, as a result of this constitutional provision, the legitimacy of the President - the guarantor of the continuity of the State - as derived from his election by direct universal suffrage and, therefore, as derived from the sovereign people, shall in no way be diminished,

Whereas it follows that the President of the Republic remaining in office shall preserve all his constitutional prerogatives;

HEREBY DECIDES AS FOLLOWS:

Article 1

The aforementioned petition is declared receivable.

Article 2

The presidential elections shall be postponed until a date to be determined by the Government in agreement with the Congolese political community as a whole.

Article 3

Accordingly, the current President, the guarantor of the continuity of the State,

Shall remain in office until power is transferred to a successor elected by direct universal suffrage,

Shall preserve all his constitutional prerogatives.

Article 4

This decision shall be published in the Official Gazette of the Republic.

Deliberated by the Constitutional Council at its meeting held on 19 July 1997 with the participation of:

Zacharie Samba, Vice-President of the Constitutional Council

Albertine Lipou-Massala, Jean Ganga-Zandzou, Alexis Bob Dia-Massamba, Nestor Makoundzi-Wolo, Marcel Mabounda, Ambroise Hervé Malonga, Members of the Constitutional Council

(Signed) Agathon NOTE
President of the Constitutional Council